

**ASSIGNMENT OF LEASES AND RENTS**

**THIS ASSIGNMENT** made this 20th day of September, 2002, by and between **HYDE SCHOOL**, a Maine non-profit corporation with a mailing address of 616 High Street, Bath, Maine 04530 (referred to herein as "Borrower") and **BATH SAVINGS INSTITUTION**, a banking organization with a mailing address of P.O. Box 548, 105 Front Street, Bath, ME, 04530 (the "Bank");

**WITNESSETH:**

**WHEREAS**, Borrower is the owner of certain real estate located at 9 Redlon Road, in Bath, Maine a residential property, (the "Property"); and

**WHEREAS**, Borrower executed and delivered to Bank: (a) a promissory note in the original principal amount of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** of even date herewith (the "Note"); (b) a Mortgage and Security Agreement of even date herewith (the "Mortgage"), (the Note, Mortgage and related documents executed by Borrower in connection with the financing extended by Bank on the Property are hereinafter collectively referred to herein as the "Loan Documents"); and

**NOW THEREFORE**, in consideration of the Property and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations paid by Bank to Borrower, the receipt and sufficiency of which are hereby acknowledged, and to better secure the payment to Bank of (i) all monies which may be due and payable to Bank under the Note and Mortgage, and (ii) all monies which may be advanced by Bank on behalf of Borrower under the terms of the Mortgage, Borrower hereby **AGREES** as follows:

1. Borrower hereby grants, transfers, bargains, sells, assigns, conveys, and sets over unto Bank, its successors and assigns, all right, title and interest of Borrower in and to, (i) all leases, subleases, licenses, concessions and other occupancy agreements which now or may hereafter affect the Property or any part or parts thereof and all guarantees, modifications, renewals and extensions thereof (the "Leases"), and (ii) all deposits made or hereafter made in respect of the Leases, together with all of the rents, income, revenues, issues and profits, due and to become due or to which Borrower is now or may hereafter become entitled, arising out of the Leases or the Property or any part or parts thereof (collectively, the "Profits").

2. Subject to the terms of Paragraph 14 hereof, Borrower gives and grants unto Bank the power and authority following any default hereunder which remains uncured for thirty (30) days following written notice, or under any other of the Loan Documents which remains uncured following any applicable grace period to:

- (i) enter upon and take possession of the Property and manage same;
- (ii) enforce, modify, cancel or accept a surrender under any or all of the Leases;
- (iii) demand, collect, sue for, attach, levy, recover, receive, compromise, and

adjust and make, execute, and deliver receipts and releases for, Profits which may be or may hereafter become due, owing or payable from any present or future lessees, sub-lessees, licensees, concessionaires or other occupants of the Property or any part thereof (the "Lessees");

(iv) receive, endorse and deposit for collection in the name of Borrower or Bank any checks, promissory notes or other evidences of indebtedness, whether made payable to Borrower or Bank, which are given in payment or on account of rent for the Property or any part or parts thereof, or by way of compromise or settlement of any indebtedness for such rents;

(v) give acquittances for rents received;

(vi) institute, prosecute, settle or compromise any summary or other proceedings for the recovery of the Profits or for removing any and all Lessees;

(vii) institute, prosecute, settle or compromise any proceedings for the protection of the Property, for the recovery of any damage done to the Property or for the abatement of any nuisance thereon or thereabouts;

(viii) defend, settle or compromise any legal proceedings brought, or claims made against, Bank or its agents, employees or servants which may affect the Property, and, at the option of Bank, defend, settle or compromise any claims made or legal proceedings brought against Borrower which may affect the Property or any part thereof;

(ix) lease or rent the Property or any part thereof for such time and at such rentals as Bank, in its sole discretion, may deem advisable;

(x) make any changes or improvements, structural or otherwise, on, in or to the Property or any part thereof which Bank may deem necessary or expedient for the leasing, renting or preservation thereof;

(xi) keep and maintain the Property in tenantable and rentable condition and in a good state of repair;

(xii) purchase such equipment and supplies as may be necessary or desirable, in the opinion of Bank, for use in connection with the operation of the Property;

(xiii) pay, from and out of the Profits collected by Bank hereunder, or from or out of any other funds, all taxes, assessments, water charges, sewer rents, and other governmental charges levied, assessed or imposed against the Property or any part thereof, and any and all other charges, costs and expenses which Bank may deem necessary or advisable to pay in connection with the management and operation of the Property;

(xiv) contract for and purchase such insurance as Bank may deem advisable or necessary for the protection of Bank and the Property, including, without limitation, fire, general liability, boiler, plate glass, rent, demolition and workmen's compensation insurance;

(xv) execute and comply with all laws, rules, orders, ordinances and requirements of the United States, the State of Maine and any political subdivision thereof, and any agency, department, bureau, board, commission or instrumentality of any of them (collectively, "Governmental Authorities"), and remove any and all violations which may be filed against the Property;

(xvi) enforce, enjoin or restrain the violation of any of the terms, provisions and conditions of the Leases; and

(xvii) do anything and everything which Borrower could or would do which might increase the Profits or which might diminish the expense of operating the Property, whether herein expressly authorized or not, and in all respects act in the place and stead of Borrower and have all of the powers as owner as possessed by Borrower for the purposes aforesaid.

All of the foregoing powers may be executed by Bank or by its agents, servants or attorneys in the name of Bank or in the name of Borrower, and in such manner as Bank, its agents, servants, or attorneys consider to be necessary, desirable, expedient, or appropriate; **PROVIDED, HOWEVER,** under no circumstances shall Bank be under any obligation to exercise any of the foregoing rights and shall not, in any manner, be liable to Borrower or any other party for failure to exercise such rights. Nothing herein shall limit the rights of Bank under the Mortgage or any of the Loan Documents.

3. Subject to the provisions of Paragraph 14 below, Bank shall have the unqualified right to receive, use and apply the Profits collected and received by it under this Assignment (a) for the payment of any and all costs and expenses incurred in connection with (i) enforcing the terms of this Assignment, (ii) upholding and defending the rights of Bank hereunder, and (iii) collecting rents due under the Leases; and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) interest and principal due on any and all liens on the Property; including the Mortgage, (ii) taxes, assessments, water charges and sewer rents and other governmental charges levied, assessed or imposed against the Property or any part thereof, (iii) insurance premiums, (iv) costs and expenses in prosecuting or defending any litigation referred to herein, and (v) wages and salaries of employees, commissions of agents and attorneys' fees. After the payment of all such costs and expenses and after Bank shall set up such reserves as it, in its sole discretion, shall deem necessary for the proper management of the Property, Bank shall apply all remaining Profits collected and received by it to the reduction of the indebtedness secured by the Mortgage.

4. Borrower hereby irrevocably constitutes and appoints Bank its true and lawful attorney to undertake and execute any or all of the powers described herein either in express terms or generally, with the same force and effect as if undertaken or executed by Borrower, and Borrower hereby ratifies and confirms any and all things done or omitted to be done by Bank, its agents, servants, employees or attorneys in, to or about the Property, provided, however, that Bank shall not exercise any authority granted hereby unless there occurs: (i) a default hereunder which remains uncured for thirty (30) days following written notice, or (ii) a default under any of the Loan Documents which remains uncured following any applicable grace

period.

5. Bank shall not in any way be liable to Borrower for any act done or anything omitted to be done by it in good faith in connection with the management of the Property, except for the consequences of its own gross negligence or willful misconduct, nor shall Bank be liable for any act or omission of its agents or attorneys, provided that due care is used by Bank in the selection of such agents and attorneys. Bank shall be accountable to Borrower only for monies actually received by it pursuant to this Assignment.

6. Borrower hereby covenants and agrees:

(i) to perform faithfully every obligation which Borrower is required to perform under the Leases;

(ii) to enforce, or to secure the performance of, at its sole cost and expense, every obligation to be performed by Lessees;

(iii) promptly to give notice to Bank of any material notice of default received by Borrower from any and all Lessees and, upon request from Bank, to promptly give Bank a copy of any notice of default given by Borrower to any and all Lessees;

(iv) not to collect any rent under the Leases for more than thirty (30) days in advance of the time when the same shall become due, or anticipate the rents thereunder;

(v) not to further assign as security the Leases, or otherwise, or the Profits due or to become due, or to which Borrower may now or hereafter become entitled;

(vi) except in the ordinary course of business, not to waive, condone or in any manner discharge any Lessees from their obligations under the Leases, without prior written consent of Bank;

(vii) except in the ordinary course of business, not to cancel, abridge, accept surrender of or otherwise modify, or amend, by sufferance or otherwise, the Leases or any of the terms, provisions or covenants thereof, without the prior written consent of Bank;

(viii) to comply with all laws, rules, orders, ordinances and requirements of all Governmental Authorities;

(ix) to deliver copies of all Leases to Bank upon Bank's reasonable request;

(x) to appear in and defend, at Borrower's sole cost and expense, any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Borrower as the Lessor, Lessees or guarantors thereunder;

(xi) to hold all security deposits collected by Borrower in connection with the Leases in segregated bank accounts for the benefit of the Lessees, which Bank Accounts to be

held by Bank.

(xii) without prior written consent of Bank which shall not be unreasonably withheld, not to enter into any Leases of the Property, or any part thereof, which (1) are not in the ordinary course of business; (2) are for a rental payment materially below market rental; or (3) have a term greater than one (1) year.

7. Borrower hereby represents and warrants the following to Bank:

(i) Borrower has not executed or granted any modifications or amendments of the Leases, either orally or in writing;

(ii) to the best of Borrower's knowledge, there are no defaults now existing under any of the Leases and no event has occurred which with the delivery of notice or the passage of time, or both would constitute a default or which would entitle the landlord or the tenant under the Leases to cancel same or otherwise avoid their obligations thereunder, except to the extent disclosed to Bank;

(iii) Borrower has not accepted advance rent under the Leases for more than thirty (30) days in advance of the time when the same shall become due;

(iv) Borrower has not executed an assignment of any of the Leases or of its right, title and interest therein or the rentals to accrue thereunder, except as provided in the Mortgage; and

(v) the representations set forth in the Mortgage are true and correct.

8. It is understood and agreed that nothing contained in this Assignment shall prejudice or be construed to prejudice the right of Bank, without notice, to institute, prosecute and compromise any action which it would deem advisable to protect its interest in the Property, including an action to foreclose the Mortgage, and in such action, to move for the appointment of a receiver of the Profits, or prejudice any rights which Bank shall have by virtue of any default under the Mortgage. This Assignment shall survive, however, the commencement of any such action and shall continue in full force and effect in the event of any foreclosure action until a sale of the Property shall be had thereunder.

9. Borrower agrees to indemnify and hold Bank harmless from and against any and all liability, loss, damage, cost and expense, including reasonable attorneys' fees, which it may or shall incur under any of the Leases, except for liability which arises as a result of the Bank's gross negligence or willful misconduct. Should Bank incur any such liability, loss, damage, cost or expenses, the amount thereof, together with interest thereon at a rate equal to 1% per annum in excess of the then current rate being charged by Bank under the terms of the Note, which this Assignment secures as the same may vary from time to time, shall be payable by Borrower to Bank immediately upon demand, or at the option of Bank, Bank may reimburse itself therefor out of any Profits collected by Bank. Nothing contained herein shall obligate or be

construed to obligate Bank to perform any of the terms, covenants or conditions contained in the Leases or otherwise to impose any obligation upon Bank with respect to any of the Leases.

10. Upon request of Bank, Borrower shall execute and deliver to Bank, such further instruments as Bank may deem necessary to effect this Assignment and the covenants of Borrower contained herein. Borrower, at Borrower's sole cost and expense, shall cause such further instruments to be recorded in such manner and in such places as may be required by Bank.

11. Borrower shall pay all recording and filing fees in respect of this Assignment and any agreements, instruments and documents made pursuant to the terms hereof or ancillary hereto, as well as any and all taxes which may be due and payable on the recording of this Assignment and any taxes hereafter imposed on this Assignment. Should Borrower fail to pay same, all such recording and filing fees and taxes may be paid by Bank on behalf of Borrower and the amount thereof, together with interest at a rate of one (1%) percent per annum in excess of the then current rate being charged by Bank under the terms of said Note as the same may vary from time to time, shall be payable by Borrower, or Bank, immediately upon demand, or at the option of Bank, may reimburse itself therefor out of the Profits collected by Bank.

12. Bank shall be entitled to the appointment of a receiver for the Property, without notice to Borrower upon the occurrence of any of the events set forth in Paragraph 14 hereof.

13. Failure of Bank to avail itself of any of the terms, covenants and conditions of this Assignment shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Bank under this instrument are cumulative and are not in lieu of but are in addition to, and shall not be affected by the exercise of, any other rights and remedies which Bank shall have under or by virtue of law, the Note, the Mortgage, or any other document executed in connection therewith (collectively, the "Other Rights"). The rights and remedies of the Bank hereunder may be exercised concurrently with any of the Other Rights.

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14. Borrower shall have the right to collect all the Profits, and to retain and use and enjoy the same, unless and until (a) Borrower defaults in any of the terms, covenants and conditions contained in this Assignment which remains uncured for thirty (30) days after written notice, or (b) any of the representations or warranties of Borrower contained herein or contained in any of the Loan Documents by and between Borrower and Bank shall prove to be materially incorrect, or (c) there occurs any event specified in the Note, Mortgage or contained in any of the Loan Documents which constitutes a default thereunder and which remains uncured following any applicable grace period. This Assignment shall continue in full force and effect until the Mortgage shall have been satisfied and discharged of record. Upon termination of this Assignment as hereinbefore provided, this Assignment and the authority and powers herein granted by Borrower to Bank shall cease and terminate, and, in that event, Bank shall (i) execute and deliver to Borrower such instrument or instruments effective to evidence the termination of this Assignment and the reassignment to Borrower of the rights, powers, and authorities granted herein, and (ii) deliver to Borrower any monies held by Bank for the benefit of Borrower. Borrower agrees that upon termination of this Assignment he shall assume payment of all

unmatured or unpaid charges, expenses or obligations incurred or undertaken by Bank in connection with the management of the Property.

15. All of the representations, warranties, covenants, agreements and provisions in this Assignment by or for the benefit of Bank shall bind and inure to the benefit of its successors and assigns.

16. Nothing in this Assignment shall be construed to give to any person other than Bank and its successors and assigns any legal or equitable right, remedy or claim under this Assignment and this Assignment shall be held to be for the sole and exclusive benefit of Bank and its successors and assigns.

17. All notices, demands or requests made pursuant to this Assignment must be in writing and mailed to the party to which the notice, demand or request is being made by certified or registered mail, return receipt requested, as follows and shall be deemed given when placed in the United States mail:

to Bank at:

105 Front Street,  
P.O. Box 548  
Bath, ME 04530  
Attn: Geoff G. Gattis  
Senior Vice President

to Borrower at:

616 High Street  
Bath, Maine 04530

or at such different address as either Borrower or Bank shall hereafter specify by written notice as provided herein.

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18. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modifications or discharge is sought.

19. This Assignment shall be governed by, construed under and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, the said **Robert Pauline, Chief Financial Officer of HYDE SCHOOL** has caused this Assignment to be signed and sealed as of the day and year first above written.

Cynthia Morgan

HYDE SCHOOL

By: Malcolm Gauld

~~Robert Pauline~~

~~Its: Chief Financial Officer~~

MALCOLM GAULD

PRESIDENT

STATE OF MAINE

Sagadahoc, SS.

September 20, 2002

Personally appeared the above named ~~Robert Pauline~~, <sup>MALCOLM GAULD</sup> ~~Chief Financial officer~~ <sup>President</sup> of Hyde School and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Hyde School.

Before me,

David L. Galgay Jr.

Attorney at Law/Notary Public

Print Name: David L. Galgay Jr.

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**EXHIBIT A**

Three certain lots or parcels of land, with the buildings thereon, located on Redlon Road in said Bath, more particularly described and bounded as follows:

**PARCEL 1:**

BEGINNING at a point on a road leading from Richardson Street into the Hyde Estate at a point fifty (50) feet north of a driveway leading to the barn;

THENCE along said road leading around the front of the barn for a distance of seven hundred (700) feet to a point;

THENCE in a westerly direction one hundred twenty-five (125) feet to a point;

THENCE in a northerly direction five hundred fifty (550) feet to the point of beginning.

ALSO CONVEYING all rights relating to a permit or easement to connect the above described premises to a water system as more fully set forth in a tripartite agreement between Curtis & Greenlaw, Inc., Pine Tree Society for Crippled Children and Adults, Inc. and the Bath Water District, which agreement is dated April 22, 1964 and recorded in the Sagadahoc County Registry of Deeds, Book 336, Page 412, to which agreement and its record reference may be had for further details, subject to, however, the obligations, conditions and limitations as set forth in said agreement.

EXCEPTING from the above described premises all that property described in the Deed of Ten-Twenty Realty Company to Thomas T. Walsh, Inc. dated April 30, 1990 and recorded in the Sagadahoc County Registry of Deeds, Book 1006, Page 79.

Reference may be had to the Trustee's Deed of Pauline B. Redlon to Ten-Twenty Realty Company dated September 22, 1983 and recorded in the Sagadahoc County Registry of Deeds, Book 643, Page 343.

**PARCEL II:**

All land described in the deed of First Full Gospel Assembly of Bath, Inc. to Thomas T. Walsh, Inc. dated January 3, 1977 and recorded in the Sagadahoc County Registry of Deeds, Book 468, Page 128 that is, or may be, located SOUTHEASTERLY and NORTHEASTERLY of the following described line:

BEGINNING at the top of a  $3/4 \pm$  inch pipe found at the southwesterly corner of land conveyed to Joseph M. McKenna and Dorothy J. McKenna by deed from said First Full Gospel Assembly of Bath, Inc. recorded on November 19, 1976 in said Registry of Deeds in Book 448, Page 229, as shown on a plan entitled "Property Surveyed for Thomas T. Walsh, Inc." by Sagadahoc Land Surveying Service dated June 13, 1977 and recorded in said Registry in Plan Book 12, Page 97, said pipe being located S  $70^{\circ}13'10''$  W at a distance of 142.91 feet from the westerly side of Redlon Road as shown on a plan entitled "Standard Boundary Survey, Hyde School Property" by Sagadahoc Land Surveying Service, Sheet 1 of 2, dated May 15, 1987;

THENCE S  $70^{\circ}13'10''$  W a distance of 58.57 feet to the bottom of a  $1'' \pm$  iron pipe found;

THENCE S 54° 00' 20" W a distance of 367.08 feet to a survey pin set at the intersection of this course and a line located 10 feet westerly from and parallel to the most westerly side of the foundation of the warehouse located on the land of said Ten-Twenty Realty Company (as measured perpendicular), said pin also being located about N 52° 00' W, at a distance of 17.4 feet, from the northwesterly corner of said warehouse foundation;

THENCE S 16° 53' 30" E parallel to said westerly side of said warehouse foundation to the northerly line of one of the parcels of land conveyed to the Hyde School by deed of Pine Tree Society for Crippled Children and Adults, Inc. dated September 7, 1967, and recorded in the said Registry of Deeds in Book 357, Page 707, said Hyde School line being the 235 foot line in the second parcel described in a deed from E. Beatrice Cummings to Robert W. Donnell and Evelyn G. Donnell dated May 13, 1947 and recorded in the said Registry of Deeds in Book 251, Page 49.

Bearings are magnetic 1977 and based upon a plan of said "Thomas T. Walsh, Inc." recorded in the Sagadahoc County Registry of Deeds, Plan Book 12, Page 97 (specifically the two iron pipes first mentioned herein located 58.57 feet apart). The survey pin set is 5/8 in. rebar topped with a yellow plastic cap reading "B. Van Note - RL-S #1283." The above description is based upon a survey by Mainland Services, Inc. of Brunswick, Maine, Bruce A. Van Note, President.

Reference may be had to the Quit Claim Deed without Covenant of Thomas T. Walsh, Inc. to Ten-Twenty Realty Company dated April 30, 1990 and recorded in the Sagadahoc County Registry of Deeds, Book 1006, Page 82.

### PARCEL III:

Beginning AT A POINT ON THE NORTHERLY SIDELINE OF A CERTAIN PRIVATE WAY LEADING IN A GENERALLY SOUTHWESTERLY DIRECTION FROM Redlon Road into property of Hyde School, said point being located S 23° 15' 50" W a distance of 77.5 feet from the southwester corner of the foundation of the warehouse located on the land of Ten-Twenty Realty Company;

THENCE running N 16° 53' 30" W parallel to said westerly side of said warehouse foundation, and maintaining a distance of 50 feet from said foundation as extended, to land now or formerly of Thomas T. Walsh, Inc. to the westerly sideline of property of Ten-Twenty Realty Company, as described in the Trustee's Deed of Pauline B. Redlon to Ten-Twenty Realty Company dated September 22, 1983 and recorded in the Sagadahoc County Registry of Deeds, Book 643, Page 343;

THENCE running in a generally southerly direction along the westerly sideline of said property of Ten-Twenty Realty Company to the northerly sideline of said private way;

THENCE running in a generally southerly direction along the westerly sideline of said property of Ten-Twenty Realty Company to the northerly sideline of said private way;

THENCE running in a generally southwesterly direction along the northerly sideline of said way to the point of beginning.

Reference may be had to the Quit Claim Deed of Hyde School to Ten-Twenty Realty Co. dated June 4, 1993 and recorded in the Sagadahoc County Registry of Deeds, Book 1229, Page 112.

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SAGADAHOC COUNTY

Barbara J. Trott

Register of Deeds